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Via ECFS

EX PARTE

April 12, 2013

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

RE: *In the Matter of United States Telecom Association Petition for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61

Dear Ms. Dortch:

This letter provides additional information related to the request by USTelecom in the above-referenced proceeding that the Commission forbear from its remaining BOC-specific Comparably Efficient Interconnection (CEI) and Open Network Architecture (ONA) regulations. Specifically, CenturyLink provides further detail regarding the utility of those regulations -- or lack thereof, the compliance burdens that carriers face, and the practical impacts that would follow if this relief is granted. CenturyLink also responds to recent *ex partes* by Full Service Network (FSN) and the Alarm Industry Communications Committee (AICC) that mischaracterize those impacts.[1]

[1] *Ex parte* Letter to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission from James C. Falvey, Counsel for Full Service Network LP, WC Docket No. 12-61, filed Apr. 3, 2013 (FSN April 3 *ex parte*); *Ex parte* Letter to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission from Benjamin H. Dickens, Jr., Counsel for the Alarm Industry Communications Committee, WC Docket No. 12-61, filed Apr. 3, 2013 (AICC April 3 *ex parte*).

SUMMARY

In short, CEI and ONA are arcane regulatory frameworks which still compel carriers to incur significant costs despite the fact that the rules have ceased to serve any meaningful purpose. Moreover, if the relief is granted, there will be little or no practical impact on FSN or AICC -- or to any other current users of ONA services.[2]

HISTORY OF CEI AND ONA DEMONSTRATES LACK OF UTILITY

That the CEI and ONA rules have long since lost their utility is made evident by a cursory overview of their origins and subsequent history. These rules are remnants of the FCC's fifty-year-old *Computer Inquiry* proceedings.[3] Prior to 1986, BOC information services were

[2] These same conclusions apply with equal strength to the more narrow *Computer Inquiry* rule applied to all facilities-based wireline providers, the all-carrier rule, which is also addressed in the USTelecom petition.

[3] *See, Regulatory and Policy Problems Presented by the Interdependence of Computer and Communication Services and Facilities*, Docket No. 16979, Notice of Inquiry, 7 FCC 2d 11 (1966) (*Computer I NOI*); *Regulatory and Policy Problems Presented by the Interdependence of Computer and Communication Services and Facilities*, Docket No. 16979, Final Decision and Order, 28 FCC 2d 267 (1971) (*Computer I Final Decision*), *aff'd in part sub nom. GTE Service Corp. v. FCC*, 474 F.2d 724 (2d Cir. 1973), *decision on remand*, 40 FCC 2d 293 (1973) (*Computer I*); *see Amendment of Section 64.702 of the Commission's Rules and Regulations* (*Computer II*), 77 FCC 2d 384 (1980) (*Computer II Final Decision*), recon., 84 FCC 2d 50 (1980) (*Computer II Reconsideration Order*), *further recon.*, 88 FCC 2d 512 (1981) (*Computer II Further Reconsideration Order*), *aff'd sub nom. Computer and Communications Industry Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982) (*CCIA v. FCC*), *cert. denied*, 461 U.S. 938 (1983) (collectively referred to as *Computer II*); *Amendment of Section 64.702 of the Commission's Rules and Regulations*, CC Docket No. 85-229, Phase I, 104 FCC 2d 958 (1986) (*Computer III Phase I Order*), recon., 2 FCC Rcd 3035 (1987) (*Computer III Phase I Reconsideration Order*), further recon., 3 FCC Rcd 1135 (1988) (*Computer III Phase I Further Reconsideration Order*), second further recon., 4 FCC Rcd 5927 (1989) (*Computer III Phase I Second Further Reconsideration Order*); Phase I Order and Phase I Recon. Order *vacated sub nom. California v. FCC*, 905 F.2d 1217 (9th Cir. 1990) (*California I*); CC Docket No. 85-229, Phase II, 2 FCC Rcd 3072 (1987) (*Computer III Phase II Order*), recon., 3 FCC Rcd 1150 (1988) (*Computer III Phase II Reconsideration Order*), further recon., 4 FCC Rcd 5927 (1989) (*Computer III Phase II Further Reconsideration Order*); Computer III Phase II Order vacated, *California I*, 905 F.2d 1217 (9th Cir. 1990); *Computer III Remand Proceeding*, CC Docket No. 90-368, 5 FCC Rcd 7719 (1990) (*ONA Remand Order*), recon., 7 FCC Rcd 909 (1992), *pets. for review denied sub nom. California v. FCC*, 4 F.3d 1505 (9th Cir. 1993) (*California II*); *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards*, CC Docket No. 90-623, 6 FCC Rcd 7571 (1991) (*BOC Safeguards Order*), *BOC Safeguards Order vacated in part and remanded sub nom.*

subject to the structural separation requirements set forth in Section 64.702 of the Commission's rules.[4] In its *Computer III* proceedings, initiated with the Commission's *Computer III Phase I Order* in 1986, the Commission permitted BOCs to offer those information services on an integrated basis -- *i.e.*, through the LEC entity itself or otherwise without need to comply with any structural separation requirements.[5] However, in order to do so, carriers first had to comply with CEI and ONA and certain other non-structural safeguards. At a high level, the CEI regime requires BOCs to comply with numerous specified "equal access" parameters and to file a CEI plan describing how they will do that for a given information service before the service is launched. Notably, CEI was intended by the Commission to be a transitional regime that remained in place only as long as it took to get the ONA regime established.[6] CEI was never intended to remain in place as long as it has and it is largely duplicative of the ONA framework in practical effect. The transition to completely eliminate CEI never took place simply because of the appellate history associated with the *Computer III* proceeding -- specifically, the Commission's failure to fully complete remand proceedings following the last appellate review almost twenty years ago.[7]

California v. FCC, 39 F.3d 919 (9th Cir. 1994) (*California III*), *cert. denied*, 514 U.S. 1050 (1995); *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, CC Docket No. 95-20, Notice of Proposed Rulemaking, 10 FCC Rcd 8360 (1995) (*Computer III Further Remand Notice*), Further Notice of Proposed Rulemaking, 13 FCC Rcd 6040 (1998) (*Computer III Further Remand Further Notice*); Report and Order, 14 FCC Rcd 4289 (1999) (*Computer III Further Remand Order*), recon., 14 FCC Rcd 21628 (1999) (*Computer III Further Remand Reconsideration Order*).

[4] 47 C.F.R. § 64.702.

[5] *See, generally*, *Computer III Phase I Order*, 104 FCC 2d 958.

[6] *Id.*, at 1059 ¶ 201, 1064 ¶ 213, 1067-68 ¶¶ 220-221.

[7] In 1994, the United States Court of Appeals for the Ninth Circuit remanded the Commission's *Computer III* rules, finding that the Commission had not adequately explained how its nonstructural safeguards offered adequate protection against discriminatory interconnection by the BOCs. *See California III.* In 1995, the Commission released a Notice of Proposed Rulemaking which sought comment on both the remand issue in *California III* and the effectiveness of the Commission's *Computer III* and ONA rules in general. *See Computer III Further Remand Notice*. In 1998, the Commission, observing that the 1996 Telecommunications Act had brought significant changes to the telecommunications industry that affected these CEI and ONA issues, issued a Further Notice of Proposed Rulemaking to address issues raised by the interplay between the safeguards and terminology established in the 1996 Act and the *Computer III* regime. *Computer III Further Remand Further Notice*, 13 FCC Rcd 6040. Notably, in that same *Further Notice*, the Commission also sought comment on whether or not, in light of these developments, *Computer III* and ONA rules might be eliminated in connection with the Commission's 1998 Biennial Review. *Id.* at 6046 ¶ 6. While the Commission subsequently addressed a few discreet issues in its 1999 *Computer III*

The ONA regime, which was intended to be the longer lasting *Computer III* framework, at a high level, initially required carriers to proactively divide their legacy networks into building blocks -- basic service elements, basic serving arrangements, and complimentary network services -- that would be described in carrier ONA Plans and be made available to competing enhanced service providers (ESPs). Pursuant to the Commission's ONA Orders, carriers, more than 20 years ago, engaged in a lengthy and laborious process to create ONA Plans that accomplished this. In this process, carriers worked directly with the enhanced services industry to identify and unbundle the network elements that ESPs required. The ONA rules also imposed a variety of other obligations, including requirements that carriers establish procedures to ensure that they do not discriminate in their provision of ONA services, that they respond in a specified manner to enhanced service provider requests for new network elements ("120-day requests"), and that they file nondiscrimination reports and annual affidavits demonstrating the nondiscriminatory service provided to unaffiliated ESPs and documenting other ONA-related activities.

As a collective result of these prior activities, carriers long ago made every conceivable building block to their legacy networks available to third-party ESPs as a tariffed service.[8] In some cases, these processes led to the establishment of services, features or functions that had not previously been made available to ESPs. But, it is noteworthy that, in many cases, the resulting ONA services were actually those that carriers already offered -- they were now simply memorialized as well in the carrier's ONA Plan and further identified in its tariffs as ONA services. For example, carrier ONA Plans included traditional switched access functionality already available as access services as well as the carrier's existing TDM services offerings (for example, PBX and Centrex) and the features and functions that accompany those services.

Over time, due to a variety of factors, these CEI and ONA requirements have become increasingly irrelevant. To some extent, this stems from the initial accomplishments of the CEI and ONA regimes described above -- including the establishment of ONA Plans that already make network elements available to ESPs. It has been approximately ten years since CenturyLink's BOC, Qwest Corporation, received a 120-day request from a competing ESP. In other words, it's been approximately ten years since an ESP communicated to CenturyLink that it sought an ONA service not yet available to it. The CEI/ONA rules have also become irrelevant due to the industry's evolution toward broadband-oriented services where the Commission has determined that *Computer Inquiry* requirements should not apply (*e.g.*, broadband Internet access services and enterprise broadband offerings). Increased competition in telecommunications, generally, has also helped to render these obligations further irrelevant.

Further Remand Order and its 1999 *Computer III Further Remand Reconsideration Order*, it has never fully addressed the *Computer III Further Remand* issues.

[8] Subsequently, in some cases, particular ONA services may have become de-regulated at either the state or federal level. Thus, some services may no longer be tariffed. But, they continue to be offered as telecommunications services that are generally available.

It can no longer be seriously argued that ESPs require a unique level of access to BOC networks as opposed to the networks of other traditional wireline telephone companies or wireless companies, cable companies and the like.

CARRIER COSTS

Despite the fact that they no longer serve any meaningful purpose, BOCs continue to incur significant costs in order to comply with the Commission's CEI and ONA rules. All BOCs have to continue to maintain unwieldy and arcane regulatory processes to comply with CEI and ONA. By way of example, carriers must maintain internal regulatory processes to ensure that employees remain familiar with the aging ONA and CEI requirements, that CEI/ONA-specific non-discrimination and equal access requirements are met, that new products receive CEI/ONA reviews, and that CEI/ONA-related documentation (*e.g.*, extensive descriptive material in carrier tariffs) is maintained. These processes increasingly result in confusion and operational churn as carriers strive to apply 30-year old regulatory frameworks in today's telecommunications environment. Collectively, these processes impose material costs in terms of employee time and dollars invested to support them. CenturyLink estimates that, in the last year, it had between 55 and 60 staff in just the core of employees who either maintained CEI/ONA specific processes or became engaged in some CEI/ONA-related compliance activities, large or small. Determining the costs of compliance is difficult, but the costs are real, even apart from the equally real, but more elusive, cost of the operational churn described above.

And, the CEI and ONA rules impose other costs. Both the rules and the regulatory processes they have spawned fundamentally impede the ability of carriers to develop and deploy innovative products that respond to market demands in a timely fashion. Similarly, advance product notice aspects such as the CEI plan posting requirement give a BOC's competitors an undue advantage and provides further disincentives to BOC innovation in the information service area. These impacts ultimately reduce each carrier's incentive and ability to invest in and deploy network infrastructure.

As was also described in great detail in USTelecom's petition, these further costs are all well documented in the Commission's own past orders. In its 2005 *Wireline Broadband Order*, the Commission correctly observed that the *Computer Inquiry* requirements "impede the development and deployment of innovative wireline broadband Internet access technologies and services" because "vendors do not create technologies with the *Computer Inquiry* requirements in mind."[9] The Commission also concluded that the *Computer Inquiry*

[9] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers, Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services, Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements, Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C.*

requirements compelled wireline carriers when deploying advanced network equipment to either "decide not to use all the equipment's capabilities" or "defer deployment" while the equipment was re-engineered "to facilitate compliance with the *Computer Inquiry* rules" -- which, according to the Commission, were "less-than-optimal" outcomes, since they reduced "operational efficiency" and created "unnecessary costs and service delays."[10]

Elimination of CEI and ONA will relieve carriers of these burdens.[11]

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§ 160(c) with Regard to Broadband Services Provided Via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises, Consumer Protection in the Broadband Era, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14887-88 ¶ 65 (2005), *aff'd sub nom., Time Warner v. FCC*, 507 F.3d 205 (3rd Cir. 2007).

[10] *Id.* The Commission reached similar conclusions in granting forbearance from the application of *Computer Inquiry* requirements to enterprise broadband services. *See, e.g.*, *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services; Petition of BellSouth Corporation for Forbearance Under Section 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services*, Memorandum Opinion and Order, 22 FCC Rcd 18705 18733-34 ¶ 54, 18734 ¶ 56 (2007) (continued application of the *Computer Inquiry* requirements to enterprise broadband services "constrains AT&T's ability to respond to technological advances and customer needs in an efficient, effective, or timely manner" because enterprise customers have "individualized needs" that AT&T must be able to meet through "innovative service arrangements that make full use of its networks' telecommunications and information service capabilities"); s*ee also, Qwest Petition for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to its Broadband Services*, Memorandum Opinion and Order, 23 FCC Rcd 12260, 12288-89 ¶ 55, 12289 ¶ 57 (2008) (noting that eliminating the *Computer Inquiry* requirements "should benefit potential enterprise customers by giving them increased opportunities to obtain integrated service packages that meet their needs.").

[11] These burdens are all in addition to those associated with meeting the ONA reporting requirements, which the Commission eliminated via waiver in 2011. In the Notice of Proposed Rulemaking leading to that waiver, the Commission acknowledged that the CEl/ONA reporting rules impose significant costs on BOCs without any corresponding benefit. *Review of Wireline Competition Bureau Data Practices; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review -- Review of Computer III and ONA Safeguards and Requirements*, Notice of Proposed Rulemaking, 26 FCC Rcd 1579 (2011). Those rules required the filing of detailed quarterly, semi-annual and annual reports. They included such things as quarterly nondiscrimination reports that detail performance intervals for relevant services and related requirements for affidavits regarding non-discrimination in quality of service. These reporting requirements, thus, independently consumed considerable internal resources of each carrier and imposed

IMPACT OF REQUESTED RELIEF

At the same time, the elimination of these requirements will have little or no practical impact on current users of ONA services. As is made apparent by the discussion above, the ONA rules are superfluous in the sense that ESPs already have, independent of those rules, access to all the telecommunication services needed to offer their services. Every conceivable element of a carrier's legacy network is already available to competing ESPs. Granting the relief requested in USTelecom's petition will also not, by itself, result in the discontinuance of any service. This includes the services features and functions utilized by FSN and AICC to offer voicemail and alarm services, respectively -- *e.g.*, message waiting indicator, stutter dial tone, AIN triggers for operator services and directory assistance services, and line security features purchased by alarm service providers.[12] As described above, ONA services are, essentially, many of the core legacy network services that BOCs offer. They will continue to be important revenue sources for the BOCs and, thus, BOCs have every incentive to continue to offer them. And, regardless, in order to discontinue an existing service, carriers would still be required to submit to the section 214 discontinuance process (or corollary discontinuance processes for intrastate services) which provide more than adequate protection to ESPs to the extent they believe (and can actually demonstrate) that adequate substitutes do not exist or that discontinuance is not otherwise warranted.

For all these reasons, the Commission should take the action advocated in USTelecom's petition and eliminate all remaining CEI and ONA obligations.

Sincerely,

/s/ Timothy M. Boucher

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other costs jointly on the BOCs, collectively. Just one such cost falling in the latter category - the approximately $140,000 BOCs were required to spend annually for an outside consultant required simply to prepare the required joint reports in the specified formatting.

[12] *See* FSN April 3, 2013 *ex parte* and AICC April 3, 2013 *ex parte*.